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Conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/65/134 and Corr.1). During its consideration of the report, the Advisory Committee met with representatives of the Secretary-General and with the President of the International Criminal Tribunal for Rwanda, who provided additional information and clarification.

2. The report of the Secretary-General was submitted pursuant to General Assembly resolution 63/259, in which the Assembly decided that the emoluments, pensions and other conditions of service for the members of the International Court of Justice and the judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda should next be reviewed at its sixty-fifth session. The Assembly also stipulated that the review should include options for defined-benefit and defined-contribution pension schemes and requested the Secretary-General to ensure that, when conducting the review, full advantage was taken of the expertise available within the United Nations.

3. The review conducted by the Secretary-General covers the following issues: remuneration; the special allowance of the Presidents of the International Court of Justice and the Tribunals and of the Vice-Presidents when acting as President;



assistance with education costs; health insurance; survivors' benefit; travel and subsistence regulations; relocation allowance; hardship factor; and retirement benefits. In section II of the present report, the Advisory Committee addresses the Secretary-General's proposals regarding the remuneration, entitlements and benefits of all members of the International Court of Justice and/or all judges of the Tribunals, including, where appropriate, the ad hoc and ad litem judges. Section III of the report covers only the proposals of the Secretary-General concerning the extension of certain entitlements and benefits to the ad litem judges of the two Tribunals. With regard to those entitlements and benefits in respect of which the Secretary-General has not put forward any proposals (namely, health insurance, survivors' benefit, education grant for the permanent judges of the Court and the Tribunals and hardship factor), the Advisory Committee takes note of the relevant information contained in the Secretary-General's report (see A/65/134, paras. 19-25, 31-33 and 74-76).

II. Remuneration, entitlements and benefits of all members of the International Court of Justice and/or all judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

Remuneration

4. In paragraphs 3 to 13 of his report, the Secretary-General provides background information on the emoluments of the members and ad hoc judges of the International Court of Justice and the judges and ad litem judges of the Tribunals. In paragraphs 60 to 67, the Secretary-General describes the outcome of his review.

5. The Secretary-General indicates, inter alia, that pursuant to article 32 of the Statute of the International Court of Justice, each member of the Court shall receive an annual salary and that the salaries and allowances of the members shall be fixed by the General Assembly. Article 13, paragraph 3, of the Statute of the International Tribunal for the Former Yugoslavia provides that the terms and conditions of service of the judges shall be as they are for the judges of the International Court of Justice, and article 12, paragraph 5, of the Statute of the International Criminal Tribunal for Rwanda provides that the terms and conditions of service of its judges shall be the same as those of the judges of the International Tribunal for the Former Yugoslavia. Ad hoc judges of the International Court of Justice are compensated for each day they exercise their functions at a rate of one three-hundred-and-sixty-fifth of the sum of the annual salary payable to the members of the Court. Ad litem judges of the Tribunals receive an annual salary prorated for length of service.

6. Since January 2007, the salaries of the members of the Court and the judges of the Tribunals have comprised an annual base salary with a corresponding post adjustment per index point equal to 1 per cent of the net base salary, to which is applied a post adjustment multiplier for the Netherlands or for the United Republic of Tanzania, as appropriate (see General Assembly resolution 61/262). The Secretary-General indicates in paragraph 65 of his report that, as at 1 January 2010, the annual base salary of the members of the Court and the judges of the two Tribunals stood at \$166,596. For the purposes of comparison, table 1 of his report presents information on the evolution of the judges' salaries since January 2008.

Annex I to the report contains data illustrating changes in the net remuneration of members of the International Court of Justice, Secretariat officials and members of United Nations bodies for the period from January 2005 to January 2010. Annex II illustrates the movement in the gross emoluments of officers of national judiciaries, the European Court of Human Rights and the International Criminal Court for the period from 2005 to 2010.

7. The Advisory Committee was informed by representatives of the Secretary-General that the salaries of the members of the International Court of Justice and the judges of the Tribunals had kept pace with those of judges of all comparable courts. Consequently, in paragraph 67 of his report, the Secretary-General proposes that no change be effected in the current remuneration system on the occasion of the present periodic review. **The Advisory Committee has no objection to the proposal made by the Secretary-General.**

Special allowance of the President and of the Vice-President when acting as President

8. In paragraph 17 of his report, the Secretary-General states that, pursuant to article 32 of the Statute of the International Court of Justice, the President of the Court shall receive a special annual allowance and the Vice-President shall receive a special allowance for each day on which he or she acts as President. Article 32 of the Statute also provides that the allowances shall be fixed by the General Assembly. In paragraph 18 of his report, the Secretary-General indicates that the amounts of the special allowance for the Presidents of the Tribunals and for the Vice-Presidents when acting as President are the same as those established for the President and Vice-President of the International Court of Justice.

9. Paragraphs 68 to 73 of the Secretary-General's report describe the findings of his review. In brief, he states that prior to 1980, the President's special allowance had historically been set at 24 per cent of salary, with the special daily allowance of the Vice-President when acting as President set at a ceiling amount equivalent to 62.5 per cent of the President's allowance for 100 days. In 1983, the Secretary-General proposed that the 24 per cent relationship between the special allowance of the President and the annual base salary, which had ceased to apply following the 1980 periodic review, should be restored. The Advisory Committee did not support the Secretary-General's proposal, expressing the view that the level of the special allowance should not be determined through the application of a fixed ratio to the annual base salary (see A/39/7/Add.1, para. 16). Accordingly, as of 1 January 1985, the President's allowance was set at a flat amount of \$15,000 and the Vice-President's allowance at \$94 a day for a maximum of 100 days (see General Assembly resolution 40/257 A). The allowances have remained at those levels ever since, despite the Secretary-General suggesting on several occasions that they should be increased.

10. In paragraph 73 of his report, the Secretary-General suggests that the General Assembly may wish to consider increasing the special allowance of the Presidents of the International Court of Justice and the Tribunals, and of the Vice-Presidents when acting as President, to \$25,000 and \$156 per day, respectively. The financial implications of such an increase for the biennium 2010-2011, assuming that benefits would commence on 1 January 2011, would amount to \$16,200 for the International Court of Justice, \$16,200 for the International Tribunal for the Former Yugoslavia and \$16,200 for the International Criminal Tribunal for Rwanda (see A/65/134, table 2).

11. The Secretary-General states that, according to the Court, unlike in other bodies where the presiding officer is of a higher rank than the other members and therefore has a higher salary, the salary of the President of the Court is equal to that of the other members. Accordingly, it is only through the special allowance that the President (or the Vice-President when acting as President) is compensated for the additional duties and responsibilities associated with his or her position. The Secretary-General further states, in paragraph 72 of his report, that in the past, the President's allowance has never remained at the same level for such an extended period (more than 25 years), despite the trend in the cost of living. He also emphasizes that the workload of the Court, and notably that of the President, has increased not only in volume but also in complexity since 1985.

12. Upon enquiry, the Advisory Committee was informed that the additional tasks carried out by the Presidents of the Court and the Tribunals included presiding over all plenary meetings, coordinating the work of the chambers, supervising the work of the registries and issuing, where appropriate, practice directives addressing detailed aspects of the conduct of proceedings. At the Tribunals, following the introduction in 2003 of the completion strategies, the Presidents had taken on even more responsibilities, including managing the judicial calendar so to ensure that judges were appointed to all cases in a timely manner and that all cases were appropriately staffed, reporting every six months to the Security Council on the progress of the completion strategies and addressing the General Assembly on an annual basis. The Presidents also responded to audit enquiries, attended staff meetings and hosted a large number of visiting dignitaries every year.

13. In his report, the Secretary-General notes that, while prior to 1980 the President's special allowance had been set at 24 per cent of annual base salary, between 1981 and 1985 it represented 17.4 per cent of that amount and at its current level of \$15,000 it represents 9 per cent. He further notes that if the General Assembly were to agree to the Secretary-General's proposal to increase the allowance to \$25,000, it would represent an average of 15 per cent of annual base salary (see A/65/134, paras. 68 and 72). **Given the length of time that has passed since the last increase and the resulting trends in the cost of living, the Advisory Committee recommends that the General Assembly increase the special allowance of the Presidents of the International Court of Justice and the Tribunals and of the Vice-Presidents when acting as President to \$25,000 and \$156 per day, respectively.**

Travel and subsistence regulations

14. The Secretary-General indicates in paragraphs 26 and 27 of his report that the travel and subsistence regulations of the International Court of Justice were approved by the General Assembly in its resolution 37/240. The travel and subsistence regulations applicable to the judges of the two Tribunals were approved by the General Assembly in its resolution 53/214. Subsequently, in its resolution 56/285, the Assembly endorsed the Secretary-General's proposal that the reference to "installation grant" in the regulations applicable to the members of the Court and to the judges of the Tribunals be revised to refer to the "assignment grant" provisions applicable to senior officials of the Secretariat of the United Nations.

15. In paragraph 80 of his report, the Secretary-General recalls that the General Assembly last reviewed the travel and subsistence regulations for the members of the Court and the judges of the two Tribunals at its sixty-second session. At that

time, the Assembly endorsed the Advisory Committee's recommendation that there should be no change to articles 1, 2 or 3 (a) (ii) of the travel and subsistence regulations of the International Court of Justice (see A/62/7/Add.36, paras. 8 and 9, and General Assembly decision 62/547).

16. In paragraph 81 of his report, the Secretary-General proposes that no change be effected in the travel and subsistence regulations in respect of members of the International Court of Justice or the judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda on the occasion of the present periodic review. **The Advisory Committee recommends that the General Assembly endorse the Secretary-General's proposal.**

Relocation allowance

17. Background information on the genesis and evolution of the relocation allowance payable to members of the International Court of Justice is set out in paragraphs 29 and 30 of the Secretary-General's report. In brief, in its resolution 40/257 C the General Assembly decided that members of the Court who take up and maintain a bona fide residence in The Hague for at least five years during their service are eligible to receive, upon completion of their appointment and resettlement outside the Netherlands, a lump sum equivalent to 18 weeks of annual net base salary, while those who take up and maintain such a residence for at least nine consecutive years are eligible for a lump sum equivalent to 24 weeks of annual net base salary. Subsequently, in its resolution 59/282, the General Assembly also decided that members of the Court who take up and maintain a bona fide residence in The Hague for up to five years are eligible for a lump sum prorated on the basis of the 18-week ceiling referred to above, while those who take up and maintain such a residence for more than five but less than nine consecutive years are eligible for a lump sum prorated on the basis of the above-mentioned 24-week ceiling.

18. In paragraph 83 of his report, the Secretary-General recalls that, when defining the conditions of service of judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, he made a distinction between those judges and the members of the International Court of Justice in respect of certain benefits. In particular, with regard to the relocation allowance, a judge of either Tribunal who has maintained a bona fide residence in The Hague or Arusha, as appropriate, for at least three continuous years during his or her service is entitled to receive a lump sum equal to 12 weeks' net salary on the completion of his or her appointment and resettlement outside the Netherlands or the United Republic of Tanzania.

19. As noted in paragraph 5 above, the Statute of the International Tribunal for the Former Yugoslavia provides that the terms and conditions of service of the judges shall be as they are for the judges of the International Court of Justice (see art. 13 bis, para. 3) and the Statute of the International Criminal Tribunal for Rwanda provides that the terms and conditions of its judges shall be the same as those of the judges of the International Tribunal for the Former Yugoslavia (see art. 12 bis, para. 3). Accordingly, in paragraph 84 of his report, the Secretary-General suggests that, taking into consideration that the General Assembly, in its resolution 59/282, changed the conditions of service of the members of the Court by effectively removing the difference in their respective length of service as the basis for the difference in their entitlements, the Assembly may wish to consider reviewing the

conditions under which the judges of the two Tribunals are eligible for the relocation allowance with a view to aligning them to those of the judges of the Court. The financial implications of such an alignment for the biennium 2010-2011 would amount to \$34,900 for the International Tribunal for the Former Yugoslavia and \$266,000 for the International Criminal Tribunal for Rwanda (see A/65/134, table 2). **In view of the above-mentioned provisions of the Tribunals' Statutes, the Advisory Committee recommends that the General Assembly pursue the course of action proposed by the Secretary-General.**

20. As indicated in paragraph 3 above, the Advisory Committee's observations and recommendations on the issue of the relocation allowance as it applies specifically to the ad litem judges of the Tribunals are set out in section III below.

Retirement benefits

21. In paragraph 34 of his report, the Secretary-General notes that, pursuant to article 32, paragraph 7, of the Statute of the International Court of Justice, members of the Court are entitled to retirement pensions, the specific conditions of which are governed by regulations adopted by the General Assembly. In paragraphs 35 to 46 of his report, the Secretary-General gives an overview of the major decisions taken by the General Assembly in respect of the retirement benefits of the members of the International Court of Justice and of the permanent judges of the Tribunals.

22. By its resolution 53/214, the General Assembly decided to set the retirement pension for members of the Court at one half of their annual salary. In the same resolution, the Assembly approved the recommendation of the Advisory Committee that the pension benefits for the judges of the two Tribunals be based on those applicable to members of the Court, prorated to account for the difference in the length of their terms of appointment (see A/53/7/Add.6, para. 29).

23. In 2001, the Registrar of the International Court of Justice expressed concern over the disproportionate nature of pensions for retired members of the Court and/or their surviving spouses and suggested that steps could be taken to remedy the disparity in payments by an increase, to the extent possible, in pension payments to its former members. At that time, the Advisory Committee took the view that the General Assembly's decision to automatically revise pensions in payment by the same percentage and at the same date as salary adjustments continued to provide the necessary protection against an increase in the cost of living (see A/56/7/Add.2, para. 10). The Secretary-General nevertheless proposed that, in order to respond to the Court's concerns regarding the devaluation of the United States dollar vis-à-vis the euro, consideration should be given to applying the floor/ceiling mechanism to pensions in payment to former judges and their survivors residing in euro zone countries in order to protect the level of pensions against further erosion. Subsequently, in its resolution 59/282, the General Assembly decided to increase the annual value of all pensions in payment by 6.3 per cent as an interim measure and requested the Secretary-General to submit a comprehensive report to the Assembly at its sixty-first session on the protection of pensions in payment to former judges and their survivors as well as on the differences between the pension benefits of the judges of the two Tribunals and the members of the Court.

24. In compliance with the request of the General Assembly contained in its resolution 61/262, the Secretary-General commissioned, from a consulting firm, a study on options for designing pension schemes, including defined-benefit and

defined-contribution schemes, taking into account the possibility of calculating pensions on the basis of number of years served rather than term of office, and presented a report to the Assembly at its sixty-second session. At that time, the Advisory Committee endorsed some of the proposals made by the Secretary-General, in particular the proposal that the level of pension be determined by reference to years of service rather than to term of office, but did not endorse others, namely that the retirement benefits of the members of the Court be increased from 50 per cent to 55 per cent of the annual net base salary by reference to nine years of service and that members of the Court who are re-elected receive one three-hundredth of their retirement benefit for each further month of service, up to a maximum pension of three fourths of annual net base salary (see A/63/570).

25. In its resolution 63/259, the General Assembly endorsed the above-mentioned conclusions and recommendations of the Advisory Committee. The Assembly also noted that, in his report, the Secretary-General had proposed essentially only one option for designing pension schemes and that, rather than using the expertise available within the Organization, he had relied on the services of a consultant. Accordingly, the Assembly decided that, in the context of the next review of the emoluments, pensions and other conditions of service of the members of the Court and the judges of the two Tribunals, to be conducted at its sixty-fifth session, the Secretary-General should put forward options for defined-benefit and defined-contribution pension schemes and, in that regard, that he should ensure that full advantage be taken of the expertise available within the United Nations.

26. In paragraphs 88 to 90 of his report, the Secretary-General advises that, in accordance with General Assembly resolution 63/259, he engaged the expertise of the United Nations Joint Staff Pension Fund to participate in the review of options for defined-benefit and defined-contribution pension schemes. He further indicates, however, that, given the importance and scope of the review, the Fund considered that there was not enough time to prepare a sufficiently detailed report for consideration by the Assembly at its sixty-fifth session. The Fund also noted that it lacked the manpower and resources to undertake such a study on its own, and therefore proposed the establishment of a working group, including its own representatives and representatives of the Office of Human Resources Management, the International Civil Service Commission, the Court and the Tribunals, to complete a thorough review of retirement plan alternatives.

27. In paragraph 90 of his report, the Secretary-General indicates that the review, to be conducted in three stages, is expected to be completed in time for the sixty-sixth session of the General Assembly. He further indicates that any proposed changes, if approved, are not expected to have an impact on the pensions of serving or retired judges. Accordingly, the Secretary-General proposes that the review of the pension schemes for the members of the International Court of Justice and the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda be postponed until the sixty-sixth session of the General Assembly. **The Advisory Committee has no objection to the Secretary-General's proposal.**

28. With regard to the ad hoc judges of the International Court of Justice, the Secretary-General proposes, in paragraph 91 of his report, that no change be effected in the arrangements for their retirement benefits on the occasion of the present periodic review. **The Advisory Committee recommends that the General Assembly endorse the Secretary-General's proposal.**

29. As indicated in paragraph 3 above, the Advisory Committee's observations and recommendations on the issue of retirement benefits as they apply specifically to the ad litem judges of the Tribunals are set out in section III below.

III. Issues affecting only the ad litem judges of the International Tribunal for the Former Yugoslavia and of the International Criminal Tribunal for Rwanda

30. It may be recalled that, when the Security Council established pools of ad litem judges at the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (pursuant to resolutions 1329 (2000) and 1431 (2002), respectively), the Statutes of the Tribunals were amended to provide that, during the period in which they were appointed to serve, ad litem judges would benefit from the same terms and conditions of service, *mutatis mutandis*, as the permanent judges. The Statutes were further amended to reflect the understanding that, in contrast to the permanent judges, the ad litem judges would serve in the Trial Chambers for a limited period, specifically a cumulative period of up to, but not including, three years (see article 13 ter of the Statute of the International Tribunal for the Former Yugoslavia and article 12 ter of the Statute of the International Criminal Tribunal for Rwanda). In this connection, the Advisory Committee notes that the statutory procedure for the election of ad litem judges differs from that for the election of permanent judges, in that the General Assembly elects 14 permanent judges from a list of not less than 28 and not more than 42 candidates, whereas the Assembly elects a total of 27 ad litem judges from a list of not less than 54 candidates (see articles 13 bis and ter of the Statute of the International Tribunal for the Former Yugoslavia and articles 12 bis and ter of the Statute of the International Criminal Tribunal for Rwanda).

31. As the Secretary-General indicates in paragraph 10 of his report, the General Assembly, at its fifty-fifth session, was requested to consider approving conditions of service for the ad litem judges of the International Tribunal for the Former Yugoslavia (see A/55/756, paras. 18-25). At that time, the Advisory Committee drew attention to the *mutatis mutandis* provision in the Statute of the Tribunal and stated that the service of the ad litem judges was of a much more temporary nature than that of the permanent judges and could be intermittent. Accordingly, the Advisory Committee agreed with the Secretary-General that ad litem judges should not be eligible for payment of a relocation allowance and expressed the view that, given the uncertainty as to the length of service and taking into account the probability of breaks in service, there was also no need to extend the education allowance or the lump-sum survivors' benefit to the ad litem judges. The Advisory Committee also agreed with the Secretary-General that ad litem judges would not be entitled to pension benefits, pointing out that the limitation of their service to a cumulative period of less than three years had the effect of preventing them from reaching the three-year period of service after which they would be eligible for such benefits (see A/55/806, paras. 7, 10-11 and 14). In its resolution 55/249, the General Assembly endorsed the observations and recommendations of the Advisory Committee. Identical conditions of service for the ad litem judges of the International Criminal Tribunal for Rwanda were subsequently approved by the Assembly in its resolution 57/289.

32. The Advisory Committee notes, however, that since the approval of the conditions of service referred to above, both Tribunals have adopted completion strategies (see Security Council resolution 1503 (2003)). The Tribunals were initially hoping to complete their work by 2008; at present the International Tribunal for the Former Yugoslavia estimates that it will complete all trial proceedings by the end of 2012 and that appellate activity will continue into 2014 (see S/2010/270, paras. 4 and 8). The International Criminal Tribunal for Rwanda intends to complete its trial work in 2011, with appeals to be completed by the end of 2013, if no new arrests of indictees to be tried in Arusha occur (see S/2010/259, para. 82). Accordingly, the Security Council, by means of various resolutions (1705 (2006), 1717 (2006), 1877 (2009) and 1878 (2009)), has recognized the need for and authorized ad litem judges to serve beyond the maximum cumulative period of three years in the greater interest of expediting the completion of the work of the Tribunals. The table below paragraph 97 of the Secretary-General's report shows that, by the time their respective cases are completed, the majority of the ad litem judges of both Tribunals will have served for more than three years.

33. The Advisory Committee recalls that, in late 2009, by means of letters and discussions, the Presidents of the two Tribunals requested the Secretary-General to bring the differences in the conditions of service between the permanent judges and the ad litem judges of the Tribunals to the urgent attention of the General Assembly for appropriate action or decision. In support of his request, the President of the International Tribunal for the Former Yugoslavia noted that the ad litem judges had been providing indispensable services in expediting the work of the Tribunal and that the extensions of their mandates had also secured the continuity of the judicial work. For his part, the President of the International Criminal Tribunal for Rwanda highlighted the fact that the workload of the ad litem judges is identical to that of the permanent judges and that their responsibilities are nearly identical. He also pointed out that, in its resolution 1878 (2009), the Security Council had noted the concerns expressed about the terms and conditions of service of the ad litem judges but could not take any action because the matter fell within the purview of the General Assembly. He expressed the view that the continuing differences between the terms and conditions of service of the permanent judges and those of the ad litem judges were no longer justified and should be addressed in the interest of both equity and the successful implementation of the completion strategy of the Tribunal (see A/64/635, paras. 2-4).

34. The Secretary-General's initial response to those requests, in which he focuses primarily on the extension of pension benefits to the ad litem judges, is contained in document A/64/635. In its related report, the Advisory Committee expressed the view that it would be most appropriate to consider the matter of pension benefits for the ad litem judges in the context of the wider review of the emoluments, pensions and other conditions of service for the members of the International Court of Justice and the judges of the Tribunals to be conducted by the General Assembly at its sixty-fifth session (see A/64/7/Add.20, para. 15). Nevertheless, the Committee highlighted a number of issues to be borne in mind by the General Assembly when it considered the matter, namely eligibility as it relates to length of service; whether the workload and responsibilities of the ad litem judges are truly identical to those of the permanent judges; and whether, given the changed circumstances of the Tribunals' operations, the differences in the conditions of service of the two categories of judge continue to be justified (see A/64/7/Add.20, paras. 9-12).

35. In the same report, the Advisory Committee also recalled that, in its first report on the conditions of service of the ad litem judges of the International Tribunal for the Former Yugoslavia, it had stated that, although highly unlikely, circumstances could lead to a trial lasting long enough that the service of an ad litem judge would exceed three years. To cover that eventuality, the Committee had recommended that the letter of appointment should contain a proviso that, notwithstanding such a development, the consequential extension of service would not give rise to any additional entitlements or benefits other than those which already existed and which would be extended pro rata by virtue of the extension of service (see A/55/806, para. 14). The General Assembly, in its resolution 55/249, endorsed that recommendation and the Advisory Committee, during its consideration of the Secretary-General's report to the sixty-fourth session of the General Assembly, was informed that the proviso had been included in all letters of appointment signed by ad litem judges at both Tribunals (see A/64/7/Add.20, para. 8).

36. In its resolution 64/261, the Assembly endorsed the conclusions and recommendations of the Advisory Committee and decided that the difference in pension rights between the ad litem and the permanent judges of the two Tribunals should be resolved as a priority of the General Assembly at the main part of its sixty-fifth session. Upon enquiry, the Advisory Committee was informed that the matter required the Assembly's urgent attention because ad litem judges would be needed to handle the remaining workload of the Tribunals, including the anticipated requests for referrals to national jurisdictions, the possible trial of recently arrested accused persons and evidence preservation hearings. If the differences in the conditions of service persisted, ad litem judges might not be willing to take on additional work and might leave the Tribunals after the completion of their current assignments. This would necessitate the appointment of new judges and result in costly delays.

37. As a result of his review of the conditions of service of members of the International Court of Justice and the judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, the Secretary-General has made a number of proposals relating specifically to the conditions of service of the ad litem judges of the Tribunals. They are as follows:

(a) Extension of the entitlement to an education grant to eligible ad litem judges who have served for a continuous period of more than three years (see A/65/134, paras. 77-79);

(b) Extension of the entitlement to a relocation allowance to eligible ad litem judges who have served for a continuous period of more than three years (see A/65/134, paras. 85-87);

(c) Extension of retirement benefits to eligible ad litem judges who have served for a continuous period of more than three years (see *ibid.*, paras. 92-99).

38. The financial implications of the above-mentioned proposals for the biennium 2010-2011, assuming that benefits would commence on 1 January 2011, are set out in section V of the Secretary-General's report and would amount to a total of \$416,853 for the International Tribunal for the Former Yugoslavia (\$32,100 for the education grant, \$286,900 for the relocation allowance and \$97,853 for pensions) and \$928,500 for the International Criminal Tribunal for Rwanda (\$60,800 for the education grant, \$610,300 for the relocation allowance and \$257,400 for pensions).

In paragraph 98 of his report, the Secretary-General states that, having carried out an actuarial analysis of the possible granting of pension rights to the currently serving ad litem judges of the Tribunals, the United Nations Joint Staff Pension Fund has estimated that the total liability of providing the same benefits to ad litem judges as those already granted to permanent judges would be \$12,000,000.

39. The Advisory Committee notes from the Secretary-General's report that the primary justification for all three of the proposals described in paragraph 37 above are the successive decisions of the Security Council to extend the terms of office of the ad litem judges beyond a cumulative period of three years. Upon enquiry, the Committee was informed by the President of the International Criminal Tribunal for Rwanda that, while it had been foreseen that ad litem judges might be called on to serve for more than three years in exceptional circumstances (see para. 35 above), it could not have been foreseen that the multi-accused trials to which they were assigned would take so much longer than anticipated. The Committee was further informed that, had the ad litem judges not been authorized to stay on beyond the three-year maximum period, the cases that they were hearing would have had to start afresh with other judges, at significant cost in terms of both time and money. In view of the importance of achieving the goals of the completion strategy, extending the terms of office of the ad litem judges was the most practical and cost-effective option. The alternative would have been to increase the number of permanent judges, who would have received all the entitlements and benefits commensurate with their status, including a pension, education grant and relocation allowance. This would have been far more costly for the Tribunals.

40. **The Advisory Committee continues to hold the view that the terms of the signed letter of appointment referred to in paragraph 35 above remain binding, meaning that the extension of the terms of office of the ad litem judges does not give rise to any additional entitlements or benefits other than those which already exist. Accordingly, the Committee recommends that the General Assembly effect no changes in the current conditions of service of the ad litem judges in respect of the education grant, relocation allowance and retirement benefits.**

41. Nevertheless, the Advisory Committee recognizes that the situation currently facing the two Tribunals is exceptional and unprecedented. The Committee notes, in particular, that when the Security Council decided to establish the category of ad litem judge (in 2000 for the International Tribunal for the Former Yugoslavia and 2002 for the International Criminal Tribunal for Rwanda), the Tribunals' completion strategies did not yet exist. **In the Committee's view, the adoption of those strategies conferred even greater importance on the role of the ad litem judges, since without their contribution the work of the Tribunals would have been subject to further delays and additional costs would have been incurred.**

42. By the time their terms of office are projected to expire, 12 of the 24 ad litem judges currently serving at the two Tribunals will have served for five years or longer (see A/65/134, table immediately following para. 97). As indicated in the preceding paragraphs, the ad litem judges have played an important role in advancing the work of the Tribunals — indeed, when authorizing the extension of their terms, the Security Council expressly stated that the extension was in the greater interest of expediting the completion of the Tribunals' work — and have many of the same responsibilities as permanent judges. **Accordingly, the Advisory Committee recommends that, in order to recognize (a) the distinction that the**

Security Council intended to create between the categories of permanent and ad litem judge, and (b) the valuable contribution made to the Organization by ad litem judges, the General Assembly may wish to request the Secretary-General to present a proposal for a one-time ex gratia payment upon completion of service for those ad litem judges who have served for a continuous period of more than three years. In determining the amount of such a payment, the Secretary-General should take a prudent approach and may wish to use as a point of reference relevant comparable arrangements. The Advisory Committee stresses, however, that owing to the unique nature of this particular situation, such an arrangement, if ultimately adopted, should not constitute a precedent for any other category of judge working within the United Nations system.

IV. Next comprehensive review

43. In paragraph 101 of his report, the Secretary-General states that, should the General Assembly decide to revert to the three-year cycle for the review of the conditions of service and compensation for the members of the International Court of Justice and the judges and ad litem judges of the two Tribunals, the next comprehensive review would be undertaken by the Assembly at its sixty-eighth session, in 2013. **The Advisory Committee continues to believe that the three-year review cycle, established by the Assembly in its resolution 45/250 A, is the most appropriate one.**

